

Reserved

**IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL**

Civil Writ Petition No. 902 of 2004 (S/S)

Puren Singh aged about 26 years
S/o Late Shri Ganga Singh
R/o Pitoli Mukteshwar, District Nainital Petitioner.

Versus

1. Union of India through its Secretary.
Personal, Civil Secretariat, New Delhi.
2. Indian Veterinary Research Institute
through its Managing Director
having its office at Izzat Ngar Bereilly.
3. Indian Veterinary Research Institute
Mukteshwar Campus through its Director
Having its office at Mukteshwar District Nainital.
.....Respondents.

Shri B.P.S. Mer, learned Counsel for the Petitioner.
Shri Pradeep Joshi, learned Standing Counsel for Union of India.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Article 226 of the Constitution of India, the petitioner has sought mandamus, commanding the respondents to re-consider the matter of his appointment on compassionate grounds.

2. Brief facts of the case, as narrated in the writ petition are that the Indian Veterinary Research Institute is an undertaking of the Central Government which controls the institute (respondent no. 3.) at Mukteshwar. The petitioner's father was employed on post of peon at Mukteshwar with the respondent institute. He died during his service on 03.06.1997 in an accident, leaving behind his

widow, six sons including the petitioner and one daughter. It is alleged in the petition that three elder brothers of the petitioner live separately with their families while the petitioner and his mother, apart from other three children were dependant on the deceased. The petitioner further says that one of his younger brother and an un-married sister are also living with him. There is no source of livelihood for them. The petitioner moved an application (copy Annexure-1) for his appointment on compassionate ground on which explanation was sought through a letter dated 24.06.1997 (copy Annexure-2) by respondent no. 2. The said letter was also replied through respondent no. 3. When no action was taken, mother of the petitioner wrote a letter on 03.10.2002 (copy of application Annexure-5), reminding the respondents no. 2 regarding petitioner's application for appointment on compassionate ground. However, through letter dated 14.10.2002, respondent no. 2 informed that the application of the petitioner has already been rejected. Aggrieved by the same, the present writ petition has been filed.

3. A counter affidavit has been filed on behalf of the respondents in which it has been admitted that petitioner's father was peon with respondent no. 3 who died during his service on 03.06.1997. However, it is stated that out of the seven children of the deceased, one son namely Surendra Singh was already employed with respondent no. 3 (since before the death of his father) and other three brothers namely Kundan Singh, Kunwar Singh and Ram Singh are self dependent. As such appointment on compassionate grounds cannot be given to the petitioner. Apart from this, it

is stated in the counter affidavit that a family of the deceased has received Rs. 1.30 lakhs as post death dues and family pension. In para 10 of the counter affidavit, it has also been stated that appointment on compassionate ground can be given only to indigent person, who deserves immediate assistance for the family of the deceased. Since already family pension of Rs. 1,790/- per month is being paid to the family of the deceased, appointment on compassionate grounds cannot be given. The appointment on such grounds are made only as per the policy and the Government Orders the Government of India.

4. I heard learned Counsel for the parties and perused the record.

5. Admittedly, the petitioner's father Ganga Singh was serving as peon with Indian Veterinary Research Institute (for brevity I.V.R.I.), Campus Mukteshwar which was a unit of I.V.R.I., Bareilly (respondent no. 2). It is also admitted that Shri Ganga Singh died during his service on 03.06.1997. There is no dispute as to the fact that the deceased left behind him seven children and the widow. The dispute relates as to the right of petitioner for appointment on compassionate grounds and this Court has to see if the petitioner is illegally denied the appointment by the respondents.

6. Learned Counsel for the respondents argued that Surendra Singh, a major son of the deceased, was already in service with the respondent no. 2, at the time of death of

his father. And it is also argued on behalf of the respondents that three of the sons of the deceased were settled at the time of his death. But that by itself, in the opinion of this Court, cannot deprive the petitioner of his right of being considered for appointment on compassionate ground unless it is shown that he was not dependant on the deceased at the time of his death. It is nowhere stated by the respondents in their counter affidavit if the petitioner was dependant on any of his elder brothers. From the record before this Court, it appears that the petitioner was dependant on his father at the time of his death.

7. On behalf of the respondents, it is also argued that a sum of Rs. 1.30 lacks was received by the family of the deceased and they are also getting family pension at the rate of Rs. 1,790/- per month. As such, as per the orders of the Government of India and the policy, the respondents are not bound to give the appointment to the petitioner on compassionate grounds. I fail to understand the submission of the learned Counsel for the respondents that the mere fact relating to payment of family pension, if can deprive the petitioner of his right of appointment on compassionate grounds unless it is shown that the family pension is being paid to him. There is not even a single word in the counter affidavit that if even part of Rs. 1.30 lakhs or that of Rs. 1,790/- as family pension is being paid to the petitioner. No Government Order or rule is shown to this Court which prohibits consideration of appointment on compassionate ground for the reason that family pension is being paid to

one of the dependants. Apart from this, with a sum of Rs. 1.30 lakhs, it cannot be said that all the dependents of the deceased can pull of their lives beyond six months or a year. Therefore, the excuse made by the respondents for not giving appointment to the petitioner on compassionate ground cannot be said to be justified. Document Annexure-CA-2 to the counter affidavit shows that the appointment on the compassionate ground was refused to the petitioner for the reason that it can only be given when the condition of the family is very pathetic. But learned Counsel for the respondents failed to show me what more pathetic condition can be that of the family as in the present case when a widow and three of her remaining children, including un-married daughter are left to live on Rs. 1,790/- per month.

8. Therefore, in view of the discussion, this Court has no hesitation in holding that the petitioner has wrongly been denied, appointment on compassionate grounds. Accordingly, the writ petition is allowed and a mandamus is issued to the respondents to re-consider the case of the petitioner for his appointment on compassionate ground, (if he is otherwise qualified), within a period of three months from the date certified copy of this judgment is produced before the respondent no. 2. No order as to costs.

(Prafulla C. Pant, J.)

Dt. 3rd May, 2005
Sweta